IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 55 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MEHSANA DISTRICT CO-OPERATIVE MILK PRODUCERS UNION LTD

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

MR JP SHAH for Petitioner No. 1

MR AKIL QURESHI FOR MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 03/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the assessee as well as the revenue, the following 9 questions have been referred to this court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench 'A' under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') :

At the instance of the assessee :

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in its interpretation and application of sec. 35-C of the Income-tax Act, 1961?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that entire expenditure of Rs. 47,49,973/- was not eligible for weighted deduction u/s 35-C of the Income-tax Act?

3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that only 10% of the expenses incurred on dissemination of information or demonstration of modern techniques and methods of agricultural animal husbandry or dairy or poultry farming or advice on such technique or method is eligible for deduction u/s 35-C of the Income-tax Act?

At the instance of the revenue :

4. Whether the Appellate Tribunal has been right in law and on facts in coming to the opinion that the relief u/s 35-C of the Income-tax Act, 1961, requires to be granted to the assessee at 10% of the expenditure as claimed by the assessee for assessment year in question?

At the instance of the assessee :

5. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in treating the roads as 'Building' and not eligible to depreciation as 'plant'?

At the instance of the revenue :

6. Whether the assessee is entitled in law to the depreciation on fencing at the rate of 10% applicable to plant?

At the instance of the assessee :

7. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that contribution made as per the provisions of sec. 69 of the Gujarat Rajya Sahakari Co-operative Societies Act is not deductible in computation of total income?

At the instance of the revenue :

8. Whether, on the facts and in law and particularly having regard to the provisions of sec. 32A read with 11th Schedule to the I.T. Act, 1961, the Appellate Tribunal has not erred in holding that the assessee is entitled to investment allowance in respect of wireless equipment on the ground that wireless should be treated as plant?

At the instance of the assessee :

9. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that depreciation is not admissible on 30% of the value of the plant & Machinery received by way of subsidy from the Government?

2. So far as questions Nos. 1 to 4 are concerned, it has been submitted by the learned advocates that this Court has answered the said questions in I.T.R. No. 32 of 1987 and as per law laid down by this Court in the said case, the first four questions referred to hereinabove are answered in the negative i.e. in favour of the assessee and against the revenue.

3. So far as question No. 5 is concerned, it has been submitted by the learned advocates that the said question has been answered in the case of CIT v. Kaira District Co-operative Milk Producers' Union Ltd., 247 ITR 314. In view of the ratio of the judgment delivered in the said case, we answer question No. 5 in the affirmative i.e. in favour of the revenue and against the assessee.

4. So far as question No. 6 is concerned, it has been submitted by the learned advocates that the said question has been answered in the case of CIT v. Gwalior Rayon Silk Mfg. Co. Ltd., 196 ITR 149 (SC). Looking to the law laid down in the said case, we answer the said question in the negative i.e. against the assessee and

in favour of the revenue.

5. So far as question No. 7 is concerned, it has been submitted by the learned advocates that the said question has also been answered in the case of CIT v. Kaira District Co-operative Milk Producers' Union Ltd., 247 ITR 314. In view of the ratio of the said judgment, we answer question No. 7 in the negative i.e. in favour of the assessee and against the revenue.

6. There is some controversy so far as question No. 8 is concerned. The question is whether investment allowance can be allowed in respect of wireless equipments which were installed by the assessee for maintaining contact between chilling centres inter se and between chilling centres and the factory for the purpose of regulating supply of milk from one chilling center to another or from one chilling centre to the factory. Some facts will have to be looked into for the purpose of answering the said question.

7. The assessee claimed investment allowance on wireless equipments which were installed in chilling centres, factory and on certain vehicles. According to the assessee, the said wireless equipments or wireless sets were required for the purpose of regulating supply of milk to chilling centres and to the factory. Moreover, it was also required for the purpose of contacting veterinary surgeons. As the said equipments, according to the assessee, were machineries or plant, the assessee was eligible to get deduction under the provisions of sec. 32A of the Act as investment allowance.

8. The Assessing Officer rejected the claim and, therefore, the assessee filed an appeal before the CIT (Appeals). The CIT(Appeals) upheld the order of the Assessing Officer by observing that the said wireless equipments were not installed as factory equipments but were installed for the purpose of having better communication system and therefore they were for the purpose of giving more facility to the office administration. According to the Appellate Authority, the said wireless equipments were office appliances and therefore no investment allowance could have been allowed to the assessee under sec. 32A of the Act.

9. Being aggrieved by the dismissal of the appeal, the assessee approached the Tribunal by filing an appeal. After hearing the concerned parties, the Tribunal came to the conclusion that the Assessing officer and the CIT

(Appeals) had wrongly decided that the assessee should not get benefit under the provisions of sec. 32A of the Act. According to the Tribunal, the wireless equipments/sets were plants and were not office appliances and the said wireless sets had nexus with the production process. For the purpose of arriving at the said conclusion, the Tribunal had looked into the purpose for which the said wireless sets were used. It has been observed by the Tribunal that wireless equipments/sets were installed at the chilling centres, on vehicles belonging to the assessee and at the factory premises of the assessee as they were required for the purpose of maintaining contact between chilling centres inter se and between chilling centres and the factory. It also appeared to the Tribunal that the wireless equipments were very much required for the purpose of regulating supply of milk at chilling centres and at the factory of the assessee. Thus, the Tribunal came to the conclusion that the wireless equipments had nexus with the production process and by observing so, the Tribunal upheld the claim of the assessee made under the provisions of sec. 32A of the Act.

10. Learned advocate Shri Akil Qureshi appearing for the revenue, at whose instance the said question has been referred to this court, has submitted that according to the provisions of sec. 32A(1)(b), no investment allowance can be allowed in respect of any office appliance or road transport vehicle. He has drawn our attention to the second proviso to sec. 32A(1) and has submitted that though investment allowance can be given on machineries and plants specified in sub-sec. (2) of sec. 32A of the Act, no deduction can be allowed under sec. 32A in respect of any office appliance or road transport vehicle as provided in sec. 32A(1)(b). It has not been disputed by the revenue that the wireless equipment is a machinery. But the case of the revenue is that if the machinery or plant which is used as office appliance, by virtue of the second proviso to sec. 32A of the Act, the assessee is not eligible for investment allowance.

11. On the other hand, learned advocate Shri J.P. Shah appearing for the assessee has submitted that the assessee is entitled to investment allowance as per the provisions of sec. 32A of the Act for the reason that the wireless equipment is a plant or machinery, which is eligible for investment allowance under sec. 32A of the Act, as necessary conditions incorporated in sec. 32A(1) have been complied with in respect of wireless equipments. It has been submitted by the learned

advocate appearing for the assessee that the wireless equipment cannot be treated as an office appliance as it was admittedly not being used in the office premises of the assessee. So as to deprive the assessee of the benefit of investment allowance, according to him, the revenue must establish that the wireless equipment is an office appliance. It has been submitted by him that the Tribunal has come to the conclusion on the facts of the case that the wireless equipments/sets had nexus with the production process. He has relied upon certain judgments to show that the wireless equipment is not an office appliance and for that purpose he has relied upon judgment delivered in the case of CIT v. Tarun Commercial Mills Ltd., 151 ITR 75. He has also relied upon judgment delivered in the case of CIT v. Cochin Refineries Ltd., 212 ITR 664 to show that the vehicle which is used for special purpose may not be treated as a road transport vehicle, though in ordinary circumstances, it may be treated as a transport vehicle. He has also submitted that in certain cases the revenue has to look at the purpose for which the plant or machinery is being used. So as to give an instance, he has referred to the judgment delivered in case of CIT v. SLM Maneklal Industries Ltd., 205 ITR 547, wherein it was held that even a wall clock can be said to be "plant" and development rebate can be given in respect of the cost of the wall clock.

13. We have heard the learned advocates at length. We are of the opinion that the Tribunal did not commit any error while coming to the conclusion that the assessee was eligible for benefit under the provisions of sec. 32A of the Act in respect of the wireless equipmenst/sets. It is pertinent to note that the Tribunal is a final fact finding authority. The Tribunal has found that the wireless equipments were installed by the assessee at the chilling centres, the factory and on the vehicles belonging to the assessee. Thus, it is a matter of fact that the said equipments were not installed in the office. Moreover, the Tribunal has also come to the conclusion that the wireless equipments had nexus with the production process. Apart from the above findings, in our opinion, it cannot be said that the wireless equipments which were installed by the assessee were office appliances. This court, in case of Tarun Commercial Mills (supra), while referring to the word "appliance" has observed as under :

> "The word "appliance" is qualified by the word "office" and, therefore, we must give some meaning to the word "office" and unless an

> appliance is capable of being primarily used in an office, it cannot be termed as "office appliance". It must be, therefore, an appliance which is generally used in office as an aid or a facility for the proper functioning of the office."

14. Thus, this Court has observed that unless an appliance is capable of being primarily used in an office, it cannot be termed as "office appliance". In normal circumstances, wireless equipments are not used as office appliances in the office for the purpose of communication. Normally it is used for the purpose of communication with a person who moves around a lot and who cannot be easily contacted at fixed places where there is a facility of telephone. Looking to the meaning of the word "office appliance" given by this court in the judgment referred to hereinabove, we also come to the conclusion that, in the instant case, the wireless equipment cannot be termed or treated as an office appliance.

15. If the wireless equipment, which is not used in the office and which is not an office appliance, it cannot be said that it is covered by the second proviso to sec. 32A(1) of the Act. In such a case, in our opinion, the assessee would become eligible to have benefit under sec. 32A of the Act.

16. For the reasons stated hereinabove, we are of the view that the wireless equipment cannot be treated as an office appliance and, therefore, the Tribunal has rightly allowed the claim of the assessee under the provisions of sec. 32A of the Act. In the circumstances, we answer question No. 8 in the negative, that is, in favour of the assessee and against the revenue.

17. So far as question No. 9 is concerned, it has been submitted by the learned advocate that the said question has been answered by this Court in the case of the assessee itself in ITR No. 51/86. Looking to the law laid down by this court in the said judgment, we answer the said question in the negative i.e. in favour of the assessee and against he revenue.

The reference thus stands disposed of with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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